UNITED
NATIONS

CCPR

International Covenant on
Civil and Political Rights

Distr.
GENERAL

CCPR/C/SR.1313
21 April 1994

ORIGINAL: ENGLISH

HUMAN RIGHTS COMMITTEE

Fiftieth session

SUMMARY RECORD OF THE 1313th MEETING

Held at Headquarters, New York,
on Tuesday, 5 April 1994, at 3 p.m.

Chairman: Mr. ANDO

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The meeting was called to order at 3.25 p.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (continued)

Second periodic report of El Salvador (continued) (CCPR/C/51/Add.8)

1. At the invitation of the Chairman, Mr. Meléndez and Ms. Villalta (El Salvador) took places at the Committee table.

2. The CHAIRMAN said that the delegation of El Salvador would proceed to answer questions held over from sections III and IV of the list of issues.

3. Mr. MELENDEZ (El Salvador) said that censorship could, indeed, potentially violate individual freedoms, in particular freedom of expression. The old laws of El Salvador, which had not undergone major changes, had been enacted in the early 1950s to combat anarchic doctrines aimed at undermining the State's security. Currently, especially since the signing of the peace agreements, the main thrust of censorship was to try to maintain a certain public moral standard. Thus, as in many other countries, including developed countries, public performances, particularly cinematographic films and videotapes shown on television or in cinemas, and radio broadcasts were evaluated to ensure that minors were not exposed to scenes of excessive violence, obscenity or vulgarity.

4. With regard to freedom of association, while it was permitted in respect of private and autonomous institutions, there were some restrictions in respect of public institutions, although they were not spelled out in the current legislation. The reason for such implicit restrictions was that, when powerful associations such as those of the Ministries of Finance, Public Works or the giant general association of public and municipal employees decided to go on strike, they could virtually paralyse government activities. He was unaware of any political activities carried out by such associations; their main aim was to defend the interests of their members.

5. There were two main institutions for the protection of human rights: the Office of the Presidential Commissioner for Human Rights, which was essentially an advisory and policy-setting body, and the Office of the Procurator for the Protection of Human Rights, a fully independent office with its own budget which was responsible for defending and protecting human rights throughout the country. It replaced the Government Commission on Human Rights.

6. Unlike other countries, El Salvador had few indigenous minorities. However, there was a unit in the Ministry of Education responsible for ensuring the protection and preservation of the culture of the small groups that existed and for furthering their productive activities. There were very few Nahuatl speakers in the country - that language being used mainly to preserve the country's pre-Colombian history - and Spanish was, for all practical purposes, the country's only language.

7. On electoral issues, some funding was provided for electoral campaigning because many small parties could not afford the high costs involved. Any party

(Mr. Meléndez, El Salvador)

that secured at least 1 per cent of the vote was eligible for financing. As for the right and duty to vote, it was not appropriate to compare conditions in El Salvador, a developing country, with those in industrialized countries. El Salvador did not have the infrastructure to provide all the facilities that could be made available in developed countries. Everything possible was done, however, to ensure that electoral districts were established where the voters were.

8. It would be helpful, when discussing political crimes, to look back to the earlier period when the question of the political and ideological confrontation between socialism and communism had been the principal concern in certain sectors of the country. Following the signing of the peace agreements, that attitude had undergone a considerable change. As for the operation of non-governmental organizations, the activities of international non-governmental organizations were regulated by an agreement between the Government of El Salvador and the organization concerned which was ratified by the Legislative Assembly. Such organizations must operate in compliance with domestic laws. National non-governmental organizations must establish a legal personality through the Ministry of the Interior and also comply with the law.

9. On the issue of electoral irregularities, he noted that the political observers, the United Nations and the Salvadorian political parties themselves had commended the electoral process as a whole, although they had drawn attention to some inefficiency on the part of the Electoral Tribunal of El Salvador. The former head of the United Nations Mission in El Salvador (ONUSAL) had noted that the country had sound political institutions and that the political forces had decided to play by the rules; it was, indeed, important that leftist and rightist political groups could work together towards the common objective of consolidating peace. He had, however, expressed regret, in connection with the peace agreements signed at Chapultepec, that barely 10 per cent of the programme to allocate land to ex-combatants and peasants in the conflict areas had been completed.

10. Much therefore remained to be done. The old police force was still being allowed to operate in order to bridge the gap between its phasing out and the deployment of the new national police force of nearly 5,700 members on the completion of its training, pursuant to the peace agreements. There was also legislation to strengthen the judiciary and decentralize the Supreme Court of Justice awaiting approval by the Legislative Assembly. The new government authorities would set up the new Supreme Court in June 1995. The success of the programme to allocate lands would depend on the resources available and their timing. His Government was fully committed to consolidating peace, promoting democracy and protecting human rights.

11. Ms. VILLALTA (El Salvador), replying to a question concerning the acquisition of legal personality by churches other than the Roman Catholic Church under article 26 of the Constitution, said that such churches could submit their statutes to the Ministry of the Interior which could then grant them legal status. The Family Code to be implemented in October 1994 would, inter alia, change the old Roman code of paterfamilias, whereby the domicile, nationality and name of the father were imposed on the family group, and remove

(Ms. Villalta, El Salvador)

the inequalities between men and women as far as the crime of adultery was concerned.

12. With regard to the structure of the judicial system, she noted that it was composed of four tiers: the magistrates, who conducted initial investigations into a case and dealt with minor offences; the courts of first instance, which handled civil and criminal cases; the courts of second instance, which considered appeals resulting from judgements handed down by the courts of first instance; and the Supreme Court of Justice, which was currently composed of 14 judges, its President being also the President of the entire judiciary. The Supreme Court of Justice was divided into four chambers dealing with constitutional, civil and criminal matters and administrative disputes. Following the signing of the peace agreements, two new Acts had been adopted, the Career Judicial Service Act and the National Council of the Judiciary Act. A national law school had been established; all lawyers aspiring to be judges had to attend that school; and practising judges had to attend seminars there. The National Council of the Judiciary appointed judges and alternate judges to the courts of second instance, through a panel of three lawyers and proposed half of the 84 candidates for the 14 posts on the Supreme Court of Justice, the other 42 being proposed by the Bar Association.

13. As for the security of judges in the performance of their duties, the judiciary had signed an agreement with the police to protect them from the threats and intimidation to which they had been subjected especially from the associates of convicted drug traffickers.

14. The itinerant courts were mobile courts each composed of a judge of first instance rank, as its head, a clerk of the court and two assistants. Their function was to provide technical and legal support to judges of courts which had a very heavy backlog of criminal cases.

15. With regard to administrative disputes, under the Administrative Jurisdiction Remedies Act, adopted in 1978, civil servants with grievances against the public administration could bring them before the Administrative Disputes Section of the Supreme Court.

16. Mr. PRADO VALLEJO said that, while the human rights situation in El Salvador had improved, that country was still facing serious problems particularly as a result of the activities of the security forces, which continued to violate the basic rights and freedoms of Salvadorians thus disrupting society and jeopardizing the peace agreements which the President and the international community had helped to bring about. In that connection, the recommendations of the Commission on the Truth, which had the solid backing of the international community, must be fully implemented. Moreover, the amnesty law adversely affected the protection of rights guaranteed under the Covenant and must be either revoked or reviewed to allow investigations to be conducted and the perpetrators of human rights violations to be punished, otherwise there could be no real peace in the country. The victims of such violations must receive compensation and the death squads which were still in operation must be dismantled. The police force, which should be reformed in such a way as to ensure that members of other disbanded institutions were excluded, should adopt

(Mr. Prado Vallejo)

a fresh approach to, and show respect for, human rights. In that connection, the police and the armed forces should receive training in human rights; courses should also be given in schools and colleges. An efficient, independent and impartial judiciary was required, and greater efforts must be made to ensure total equality between men and women as there were still a number of restrictions which were impeding the attainment of that goal.

17. Mr. AGUILAR noted that, although the second periodic report had been prepared subsequent to the publication of the report of the Commission on the Truth, it made no mention of the Commission's recommendations. Moreover, the Amnesty Act, which also pre-dated the preparation of the periodic report, was incompatible with the provisions of the Covenant and served to conceal the truth about human rights violations committed during the years of conflict. Knowledge of the truth was the best way to bring about national reconciliation. The amnesty law granted impunity to those who had committed crimes against human dignity, and the failure to investigate and to establish the truth about those crimes was itself a violation of human rights. The claim that the legislators who had drafted the amnesty law were ignorant of the provisions of the Covenant was no excuse.

18. The agreement by the military to obey the civil authorities, although welcome, merely reflected compliance with those provisions of the Constitution which subordinated the military to civil authority.

19. The delegation had not provided answers to several of the questions put by the Committee. He hoped that those answers would be forthcoming in the third periodic report, and that, during the intervening period, the Government would take steps to redress the inequalities that existed between men and women in El Salvador.

20. On the subject of economic assistance from the international community, the Government of El Salvador seemed to employ a double standard. On the one hand, it expected the international community to be bound by its pledge to provide economic assistance while, on the other, the State refused to be bound by the recommendations of the international community. No one wished El Salvador to return to the dark days of the past; indeed, he personally was optimistic about the country's future. The new legislation that had been adopted was admirable and now needed to be implemented. He was confident that El Salvador had the human resources, the capacity and the will to do so effectively. While the report did not adequately reflect the undoubted improvement in the human rights situation in the country, the excellent oral presentations of the delegation had largely compensated for that deficiency.

21. Mr. HERNDL said that, in the 13 years since the Government of El Salvador had ratified the Covenant, the Committee had had only two opportunities to review the human rights situation in that country. Constant prodding by the international community seemed to be required in order to ensure the Government's compliance with its reporting obligations under article 40 of the Covenant. Indeed, the political and human rights situation in the country had occupied the attention of the relevant organs of the United Nations for the past several years. By signing the peace agreements in 1992, moreover, the

(Mr. Herndl)

Government had undertaken further obligations to protect human rights which it must now honour.

22. One of the major obstacles in the way of the effective implementation of the peace agreements and other instruments was the disproportionate influence of the armed forces in Salvadorian society. One quarter of the national budget was currently allocated to the military, whose members often enjoyed impunity in respect of violations of human rights. It was the Government's task gradually to reduce the influence of that group in the affairs of the State.

23. Finally, he hoped that the Government would implement the many specific recommendations of the Commission on the Truth.

24. Mr. BRUNI CELLI commended the delegation on its efforts to fill the gaps in the report in their oral statements. The report placed great emphasis on the formal and legislative aspects of the protection of human rights in El Salvador but offered little insight into the reality of the human rights situation in the country. It was, in fact, a report of good intentions rather than concrete achievements, although he recognized that the period which it covered had been an exceptionally difficult one.

25. The Committee nevertheless welcomed the signing of the peace agreements in 1992, including the agreement providing for the disbanding and disarming of the two rival armies, as well as the legislative reforms which had been introduced to safeguard human rights more effectively, in particular, the establishment of the Office of the Procurator for the Protection of Human Rights. The reform of the electoral system would, moreover, go a long way towards the consolidation of democracy in El Salvador.

26. On the negative side, however, the Government had refused to be bound by its international commitments and had permitted the human rights violations committed over many years to go unpunished. Reforms of the penitentiary and judicial systems were urgently needed in order to protect human rights. In addition, the Government's failure to consult with relevant individuals and bodies in El Salvador in the preparation of the report was a matter of concern to the Committee. He hoped that there would be broader consultation, particularly with non-governmental organizations, when the third periodic report was prepared. He remained optimistic, however, because he was familiar with the country and its people and knew of their will to triumph over their recent past.

27. Mrs. EVATT said that the periodic report and the delegation's dialogue with the Committee had highlighted a number a positive changes in the human rights situation in El Salvador. She was particularly encouraged by the reforms in the electoral process, the introduction of a new Family Code, the creation of the Office of the Procurator for the Protection of Human Rights and the inclusion in the Constitution of provisions concerning the teaching of respect for human rights.

28. The major area of concern was the lack of confidence in the armed forces. In order to strengthen the still fragile democracy, it was extremely important to depoliticize the military and to implement the recommendations of the

(Mrs. Evatt)

Commission on the Truth. It was also important to investigate past human rights abuses and to ensure that the guilty parties answered for their crimes. The victims, moreover, should be compensated for their suffering and no amnesty law should extinguish that right to compensation.

29. The Office of the Procurator for the Protection of Human Rights had an important role to play in strengthening the democratic process and in ensuring that government was based on the freely expressed will of the people. Non-governmental organizations should also be allowed to participate more fully in the development of democratic institutions and in the preparation of future reports to the Committee.

30. Mr. WENNERGREN said that the periodic report and the accompanying core document (HRI/CORE/1/Add.34) had left the Committee with the impression that the legislation adopted and the institutions established to promote human rights and the rule of law in El Salvador had not yet yielded the results expected. While the 12-year civil strife was in no small measure responsible for that failure, it was now time to ensure the effective functioning of human rights institutions. The Commission on the Truth had accurately reported on the human rights violations committed during the period of civil strife and its recommendations should be implemented as far as possible. He noted that the Procurator for the Protection of Human Rights had reported on the continuation of human rights abuses for political motives. In his view, the very fact that such reports were being made was a sign of hope for the future. For its part, the judiciary, which had failed in previous years to discharge its responsibilities adequately, should be purged of its partisan members in order to ensure an independent judiciary free from political influence. Otherwise the rule of law could not be assured.

31. Mr. LALLAH said that the report placed too much emphasis on the formal aspects of the protection of human rights and shed little light on how the rights established in the Covenant were being effectively guaranteed. He regretted that, in preparing its report, the Government of El Salvador had failed to consult with non-governmental organizations in the country and to take cognizance of the report of the Commission on the Truth and the report of the Special Rapporteur appointed by the Commission on Human Rights.

32. A number of areas, particularly those referred to in sections II and III of the list of issues, had not been adequately covered. Serious violations of human rights had been alleged in precisely those areas. Despite the oral replies which the delegation had provided to supplement the information contained in the report, he still had certain questions concerning the death penalty. For its part, the amnesty law adopted in 1993 was incompatible with the Covenant, particularly articles 2 and 26 thereof, and its constitutionality should therefore be reviewed by the Government.

33. He was nevertheless encouraged by the signs of a gradual strengthening of the rule of law and he hoped that that process would continue and lead to full respect for human rights in El Salvador.

34. Mrs. CHANET observed that, after periods of internal conflict many countries passed an amnesty law in response to a strong public consensus that it was the best means to reconciliation. That was not the case in El Salvador, where the national consensus had formed around the peace agreements and the establishment of the Commission on the Truth, and where the amnesty law, by thwarting any positive reforms undertaken and disregarding the Commission's recommendations, actually sowed the seeds of renewed conflict. In any case, it violated the Covenant, since it prevented the punishment of the guilty and redress for the victims, creating an impunity that ran counter to any genuine pursuit of human rights. The amnesty law must therefore be reconsidered and all the recommendations of the Commission on the Truth must be implemented. She hoped that the next report of El Salvador would be more comprehensive and that it would meet the Committee's expectations concerning democratic developments in the country.

35. Mr. FRANCIS remarked that, after years of conflict and human rights violations, it would have been a miracle if the report of El Salvador had been up to standard. On the positive side, there were developments such as the praiseworthy objectives being pursued by the new National Secretariat for the Family. In connection with the administration of justice, the report had also provided very instructive statistics on the commutation of sentences. It was a pity that it had not given similar statistics on cases of torture, unlawful use of force, or abuse of prisoners; the Committee had simply been told that such acts were all prohibited by law but it had not been given information on the application of the law. He expected, however, that the reports submitted by El Salvador would improve progressively.

36. Mr. POCAR underscored the quality of the dialogue with the delegation, especially as compared to the presentation of El Salvador's initial report five years earlier. Certain matters, however, required government attention. The amnesty law should be repealed, or at least revised to allow investigations of past crimes to go forward and victims to be compensated, and to prevent those guilty of violence from holding Government posts or participating in current police and judiciary activities.

37. El Salvador was clearly in a transitional period. A new Government had just been installed and the future of the country would depend on the force with which the ongoing reforms were pursued and the recommendations of the Commission on the Truth and the various human rights bodies were implemented. In addition to the suggested acceptance of regional monitoring of the human rights situation in the country, the Government might consider ratifying the Optional Protocol to the Covenant as a further impetus to the investigation of human rights violations.

38. Mr. SADI said that, while the report was rather too dry and abstract, the oral presentation by the Salvadorian delegation had been an admirable effort to shed more light on the political, judicial and social situation in the country. The dialogue with the Committee, excellent as it had been, would nevertheless be of no avail if the Committee's recommendations and views were disregarded, as had happened with the recommendations made by the Commission on the Truth a year earlier. In a time of difficult reconstruction, the emphasis must be placed on

the essentials. He hoped that the Government would have the political will to act on both the Committee's and the Commission's recommendations.

39. Mr. DIMITRIJEVIĆ observed that reading a report from a State with such a recent history of tribulations which dealt only with the adequacy of legal provisions but remained silent on the de facto situation in the country, had given him an eerie sense of not being in the realm of reality. Only two paragraphs had been devoted to the right to life under article 6, which, at that, had been interpreted solely as referring to the death penalty and did not cover extrajudicial executions, actions by military squads and the like. Although the Commission on the Truth had criticized the behaviour of the judiciary in El Salvador, the report devoted only a short paragraph to article 14 of the Covenant, stating that all was well. That kind of report led the Committee to disregard it and base its comments on other sources of information. No one had expected the Government to ascribe guilt or to write a definitive history of the recent period, but the Committee had hoped for a frank exposition of the country's problems, including that of national reconciliation, which was made more acute by the uncooperative attitude of the military. It was in the interests of the State party to learn the truth regarding the origins of the recent upheaval and to remedy the causes of the human rights grievances that had contributed to the ugly nature of the political conflicts.

40. The CHAIRMAN, welcoming the great improvement in the dialogue with the representatives of El Salvador during the current session, said that the infrastructure of the society must be rebuilt during the transitional period in order to make human rights meaningful for all Salvadorians. Human rights would in fact provide a tool for the reconstruction of the country.

41. Mr. MELENDEZ (El Salvador) assured the Committee that its concerns were also those of El Salvador, and that any legislation that had been enacted in violation of the Covenant was the result not of an intentional disregard of the Covenant but of a lack of familiarity with it.

42. Noting that the United Nations had established a welcome system of economic cooperation and assistance to complement the peace process in El Salvador and the rest of Central America and had also set up a specific UNDP-supported reconstruction fund to help El Salvador to implement the Peace Agreement, he pointed out that the process had been delayed by the fact that the funds had not arrived on time or in the form stipulated.

43. Any recommendation of the Committee directed towards the betterment of the situation in his country would be taken very seriously by his Government. In its five years in power, the Cristiani Administration had endeavoured to maintain contacts with all sides of the political spectrum and with neighbouring countries in order to advance the peace process. He assured the Committee that the political will was there. The process would take time but he hoped that the next report would meet the expectations of the Committee and that all its concerns would be addressed.

44. Ms. VILLALTA (El Salvador) said that she would not fail to transmit all the Committee's recommendations to the Ministry of Foreign Affairs. The next report would show an improvement and be more in line with the Committee's wishes.

45. Mr. Meléndez and Ms. Villalta withdrew.

Draft general comment on article 27 of the Covenant (continued) (CCPR/C/50/CRP.1/Rev.1)

46. Mr. LALLAH, introducing the revised draft general comment on article 27 of the Covenant (CCPR/C/50/CRP.1/Rev.1), said that it referred variously to the "right" or the "rights" protected under article 27; in all cases, the singular form should be used.

47. In the penultimate sentence of paragraph 5.2, the words "for example" should be added after the words "general rights" and the words "of assembly" should be added after the words "of association". In the penultimate sentence of paragraph 5.3, the word "distinct" should be replaced by the word "particular".

48. In paragraph 6.1, the word "legislative" should be added before "judicial or administrative" in the last sentence and minor editorial changes were required in the first sentence.

49. In paragraph 9, in which he had attempted to reconcile three different drafts, the first four sentences should be deleted and the fifth and sixth sentences, which would become the first and second sentences, should be revised to read "The Committee concludes that article 27 relates to a valuable right whose protection imposes specific obligations on States parties. The protection of this right ensures ...". The rest of the paragraph would remain unchanged.

50. Mr. HERNDL suggested that in the new second sentence of paragraph 9, the word "ensures" should be replaced by the phrase "is designed to ensure", since the protection of the rights conferred under article 27 was only one way to help to ensure the survival and continued development of the cultural, religious and social identity of the minorities concerned.

51. Mr. POCAR said he felt that it might be better to refer in all cases to the "rights" rather than the "right" protected under article 27, since article 27 referred to distinct minorities in terms of different rights and there could be a minority which was not entitled to all those rights at the same time.

52. Paragraphs 3.2 and 7 were repetitive; the Committee should avoid being too insistent by referring twice to the question of the use of territory and its resources.

53. Mrs. EVATT said that it had been decided earlier that the words "in any other circumstances" should be added after the words "does not" in the last sentence of paragraph 5.3. That would make it clear that when a person did not speak the official language of the court, he would be able to use his own language through an interpreter, and that the right to interpretation was distinct from the right to use one's own language.

54. Mr. BRUNI CELLI said that while he agreed with the content of paragraph 6.2, he felt that the wording was very weak. There was a risk, if the second sentence was left as it stood, that a State party might take measures to protect the identity of some minorities in a way that was detrimental to other minorities. In placing an obligation on States parties, the last sentence of paragraph 9 did not accord with the spirit of article 27.

55. Mr. DIMITRIJEVIĆ said that he had difficulty with paragraph 3.2, not only because it was repetitive, but also because, while the first sentence dealt with the sovereignty and territorial integrity of a State party and paragraph 3.1 drew a distinction between the right of self-determination and the rights protected under article 27, the second sentence of paragraph 3.2 referred to territory and the right to the use of its resources. That could have undesirable implications. He felt that paragraph 3.2 should be deleted, or, alternatively, that only the first sentence should be retained.

56. Mr. BAN said that he supported the changes read out by Mr. Lallah, in particular, the deletion of the fourth sentence of paragraph 9 which could have given rise to various interpretations. He had some problems with the last sentence of paragraph 4 because he felt that the real problem was that States parties based the contention that they did not discriminate on the fact that they had no minorities.

57. Mrs. CHANET said that in paragraph 9, the Committee should not refer to a right as "valuable" since all rights were valuable and the use of that adjective only weakened the text.

58. She asked why paragraphs 6.2 to 9 of the draft comment were not included in the French text even though all the language versions had been issued on the same date.

59. Mr. POCAR said that the point raised by Mr. Bruni Celli was covered by the third sentence of paragraph 6.2, which indicated that positive measures taken by States must respect the provisions of articles 2, paragraph 1, and 26 of the Covenant.

60. Mr. EL-SHAFEI said that, in the second sentence of paragraph 3.2, the words "may consist" should be replaced by "may be reflected".

61. Paragraph 4 diluted the rights of the individual within a minority even though most of the Covenant was concerned with the rights of individuals within a community or minority. Moreover, the earlier sentences of paragraph 4 did not lead logically to the conclusion in the last sentence.

62. Mr. SADI said that he was surprised that the Committee was re-opening the debate on paragraph 3.2 and other paragraphs.

63. Mr. LALLAH said that Mr. El-Shafei had not correlated paragraph 4 with the preceding paragraph. He suggested that, in the new second sentence of paragraph 9, the word "ensures" should be replaced by the words "is directed towards ensuring". He could accept Mrs. Evatt's and Mrs. Chanet's suggestions, and also Mr. Pocar's suggestion about the use of "right" and "rights".

(Mr. Lallah)

Mr. Bruni Celli's point had been answered by Mr. Pocar. If paragraph 3.2 was deleted, the Committee would not be making the point it wished to make. As for Mr. Ban's point concerning paragraph 4, that paragraph was based on the Committee's experience with a number of States parties which claimed that they did not discriminate and which contended, on that basis alone, that they had no minorities.

64. The CHAIRMAN said that it seemed that the Committee could adopt the draft general comment, as revised.

65. Mr. NDIAYE, supported by Mrs. CHANET, said that the draft general comment could not be adopted until the full text was available in French.

66. The CHAIRMAN said that he took it that the Committee wished to adopt paragraphs 1 to 6.1 of the draft general comment. It would complete its consideration of the draft general comment when the rest of the French text was available.

67. It was so decided.

The meeting rose at 6.10 p.m.